In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE ANGLO-CALIFORNIAN BANK, Limited, appellant, v. THE SECRETARY OF THE TREASURY. } No. 31.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

SUPPLEMENTAL BRIEF FOR THE APPELLEE AND THE UNITED STATES.

The reply brief of appellant calls attention (p. 5) to an inadvertent error in the Government brief by reason of the statements on page 18 of the latter that the importers were not advised to apply to the court for certiorari and had failed to do so. The application was, however, duly made and denied by the court on April 30, 1897. (166 U. S., 722.)

This, however, makes the Government's contentions so much the stronger, both on the question of jurisdiction

and as to the merits; for, as to jurisdiction, the court has declined to take the case without intimating that there was any right of appeal, and this must be regarded under the court's previous decisions as conclusive of the jurisdictional question; and, as to the merits, this result, that is, the denial of the application for certiorari, must fairly be presumed to have been reached after a review of the merits by the court. Without intimating to any degree that the presentation now of this appeal shows a lack of conformity on the appellant's part to the conclusive determination of this case by the court, it is certainly in effect an attempt to obtain another review, and if possible a different determination, in an irregular manner, which, we confidently submit, should not be approved.

As the court's denials of motions for certiorari state no reasons, the appellant contends in effect that the denial herein is consistent with and was ordered in view of an underlying right of appeal; but, as we state, this action of the court, affecting substantially both the jurisdiction and the merits, is conclusive and final. The matter is *res adjudicata;* the decision here and in both courts below is adverse to the appellant, and he may not now be heard.

In the argument based upon the case of the *United States* v. *The American Bell Telephone Co.* (159 U. S., 548, 552), viz: that because in certain patent cases in which the United States is a petitioner the United States has a right of appeal under the statutes involved, notwithstanding the circuit court of appeals act, therefore

in revenue cases it should have the same right, the conclusion does not follow from the premise; and besides, the right might exist in the United States because of the considerations of sovereignty and the functions of the Government as *parens patriæ* and trustee for all the people, in respect to the revenue as well as in respect to patents for inventions, a fundamental reason which is applied to the latter case in the American Bell Telephone Company decision; and yet the equivalent right might not exist in the other party, in this case, in the importers. The rights of the contestants against the Government, whatever the case, are sufficiently safeguarded, because they may always bring their case before this court by an application for certiorari, just as the importers did here, and the opportunity to convince the lower court that the questions are of such importance as to demand certification thereof is also always open. Finally, on these points we reiterate the statement of the main brief, that in revenue cases the Government, like the importers, has sought review here by application for writ of certiorari.

We respectfully submit again that the decision and judgment of the circuit court of appeals should be affirmed, with costs.

HENRY M. HOYT,
Assistant Attorney-General.